

REMARKS

This response is submitted in response to the Office Action dated August 26, 2004. The Office Action rejects Claims 9, 11-18, and 20-26 under 35 U.S.C. § 102(b) and Claims 10 and 19 under 35 U.S.C. § 103. Applicants respectfully submit that the rejections are not proper for the reasons set forth below.

Claims 9, 11-18, and 20-26 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,665,406 (Reed). The Patent Office states that Reed teaches a pellet chewing gum which is coated with one or more coats of a polyol such as a maltitol, lactitol, and erythritol. The Patent Office then states "According to the 'Hackh's Chemical Dictionary,' Second Edition, page 349, erythritol is used medicinally as a vasodilator, and therefore, erythritol can be defined as a medicament." Claims 10 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Reed in view of Khan. In response to Applicants' previous argument that these references do not teach the claimed invention, the Patent Office once again refers to Reed as teaching erythritol that can be a vasodilator.

Applicants respectfully submit that this rejection is improper as a matter of law and fact. Erythritol, as used in Reed, is not a medicament. It is respectfully submitted that the Patent Office is incorrect in stating that erythritol is a vasodilator. Applicants specifically refer to the dictionary reference attached to the Office Action. Therein, it states that "tetranitro erythritol" which is stated to be yellowish crystal which explodes when heated, can be used medicinally as a vasodilator. Tetranitro erythritol is not a polyol erythritol that is used in Reed as a sugar alcohol.

Indeed, clearly, one skilled in the art would not be led to use an explosive as a sugar substitute. The sugar alcohol erythritol is no more medicament, nor explosive, than sugar.

The Patent Office's reference to Hackh's Chemical Dictionary demonstrates that the rejection is not proper. The sole basis of the rejection is, it is respectfully submitted, a misreading of a dictionary definition. Of course, when a compound or element is combined with other elements or compounds, its properties change. Erythritol, when combined with tetranitro, may become a medicament as well as an explosive. But that is not what is disclosed in Reed. It is clear all that Reed discloses is a simple sugar alcohol, not a medicament.

Accordingly, Applicants respectfully request that the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the application and earnestly solicit an early allowance of same.

Respectfully submitted,

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Dated: October 13, 2004